Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996
No._____

H. Beatty Chadwick, Petitioner
v.
R.D. Andrews, successor to George Hill,
Warden, Delaware County Prison, Respondent
and
Barbara Crowther Chadwick, Respondent

ON WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do the provisions of the sixth and fourteenth amendments to the United States Constitution require that a jury trial and other fundamental rights available to an accused in a criminal proceeding be afforded in cases of civil contempt where the contemnor has been imprisoned by a state court for 27 months?

2. Is imprisonment by a state court for an indefinite period, now 27 months in duration, as a sanction to coerce performance in civil contempt contrary to the rights secured under the eighth and/or fourteenth amendments to the United States Constitution?

3. Is imprisonment by a state court, now 27 months in duration, solely or primarily for the purpose of coercing the payment of money in a civil proceeding contrary to the rights secured by the fourteenth amendment to the United States Constitution?

4. Where a contemnor lacks the right to appeal a judgement

as to which he has been held in contempt and the judgement of contempt and imprisonment, is his imprisonment, now for 27 months, as a result of such judgements, contrary to the rights secured by the fourteenth amendment to the United States Constitution?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States

H. Beatty Chadwick, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgement of the Superior Court of Pennsylvania entered in the above entitled case on August 22, 1996, the Supreme Court of Pennsylvania having denied a petition for appeal thereof on April 8, 1997.

OPINION BELOW

The opinion of the Superior Court of Pennsylvania is unreported and is printed in Appendix A, page 1. The judgement of the Superior Court of Pennsylvania is printed in Appendix A, page 20. The Journal Entry of Judgement of the Court of Common Pleas of Delaware County, Pennsylvania, is printed in Appendix A, pp. 23 & 24.

JURISDICTION

The judgement of the Superior Court of Pennsylvania (Appendix A, page 20) was entered on August 22, 1996. A timely petition for allowance of appeal was denied by the Supreme Court of Pennsylvania on April 8, 1997 (Appendix A, pp. 21 & 22) The jurisdiction of the Court is invoked under 23 U.S.C. Sec.1257(a).

STATUTES INVOLVED

U.S. Constitution, Amendment VI: In all criminal

prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Constitution, Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution, Amendment XIV, Section 1:...nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

The Petitioner has been imprisoned continuously since April 5, 1995 under an adjudication of contempt and imprisonment made by the Court of Common Pleas of Delaware County, Pennsylvania on November 2, 1994. (Appendix B, Page 1) Such adjudication was made in connection with a divorce action in which Petitioner is the Defendant. Under the terms of the adjudication, Petitioner's imprisonment is indefinite, is not subject to any condition by which Petitioner may cause his release, and is to continue "until a further hearing is held."

The contempt adjudication was made as a result of Petitioner's nonperformance of certain acts directed by an order of the trial court dated July 22, 1994 (Appendix B, page 5), principally that Petitioner pay, within twenty-four hours, the sum of $2,500,000 into an account administered by the trial court. Such amount represented monies Petitioner had paid to a third party under a joint venture agreement in February, 1993, eighteen months

before the entry of the order, and which Petitioner advised the trial court he was unable to pay as directed. The trial court, however, adjudicated Petitioner in contempt on August 29, 1994, but imposed no sanction. Sometime thereafter, the trial court, on its own motion, notified Petitioner that a hearing on a "Petition for contempt" would be held on October 31, 1994. No such petition existed, however, and Petitioner had no notice as to the purpose of such hearing. On October 31, 1994 the trial court again adjudicated Petitioner in contempt by reason of his inability to comply with the July 22, 1994 order, and directed, by order dated November 2, 1994, that Petitioner be arrested and imprisoned. (Appendix B, page 2)

The contempt proceeding on October 31, 1994, which resulted in order by which Petitioner is imprisoned, was a summary proceeding as was the earlier proceeding which adjudicated Petitioner in contempt on August 29, 1994. Petitioner was not

present (Petitioner's counsel advised him that he would be subject to immediate arrest if he appeared), no trial was held, no trial by jury was offered, and, contrary to statements in the opinion of the court below (Appendix A, pp. 10 & 11), no evidence was received by the trial court as to Petitioner's ability to comply with the underlying order as to which Petitioner was held in contempt.

Timely appeals of both the order of July 22, 1994 (Appendix B, pp. 5 & 6) and the contempt and imprisonment order of November 2, 1994 (Appendix B, page 1) were taken to the Superior Court of Pennsylvania. Each appeal was quashed as the Pennsylvania Superior Court deemed the orders appealed from to be interlocutory and not final until a final order in divorce and property division was entered. There had not been at that time nor has there yet been any such final order.

Prior to his arrest and imprisonment, Petitioner had filed with the trial court a petition to vacate the imprisonment order. This

petition was not heard by the trial court until after Petitioner's imprisonment and was denied by the trial court on April 21, 1995 without receiving any evidence. Petitioner was not permitted to be present. Petitioner appealed this decision to the Superior Court of Pennsylvania under various state law grounds and because of denial of his due process rights under the fourteenth amendment to the United States Constitution. The affirmance by the Superior Court of Pennsylvania of the trial court's decision is part of the judgement as to which review is now sought in this Petition.

After the Superior Court of Pennsylvania denied emergency review of the appeal from the trial court, Petitioner sought habeas corpus relief in several petitions filed in the trial court. All such petitions were denied. As in the case of the petition to vacate, the trial court did not receive evidence as to Petitioner's ability to comply with the order as to which he was held in contempt, despite statements to the contrary in the opinion of the court below.

(Appendix A, pp. 10 & 11) One of such denials, after Petitioner had been confined for six months, was appealed to the Superior Court of Pennsylvania and was consolidated with the earlier appeal. Both in the trial court and appellate court, Petitioner urged that his imprisonment was unlawful on various state law grounds and because Petitioner had been deprived of due process and equal protection of the laws to which he was entitled under the fourteenth amendment to the United States Constitution.

The Superior Court of Pennsylvania, on August 22, 1996, affirmed the orders of the trial court which denied Petitioner's petition to vacate the sanction of imprisonment and denied Petitioner's petition for writ of habeas corpus. The opinion of the Superior Court (Appendix A, page 1) discussed only some of the state law grounds for appeal and did not consider at all the grounds based upon the United States Constitution. The Superior Court first held that the burden of showing inability to comply

with a court order was upon the contemnor, thus placing upon the Petitioner the very difficult burden of proving he did not have the ability to pay $2,500,000. (Appendix A, page 7) The Superior Court then declined to disturb the finding of the trial court in the absence of bias, prejudice, or ill will (Appendix A, pp. 6 & 16) although such finding was based solely upon the trial court's disbelief of the Petitioner

Petitioner petitioned the Supreme Court of Pennsylvania to allow an appeal of this judgement based upon errors in the burden of proof and other state law grounds and also based upon the failure of the Superior Court to address the Federal Constitutional issues raised in that court. The Supreme Court of Pennsylvania denied the petition without comment on April 8, 1997.

Two additional petitions, although not involved in the instant proceeding, demonstrate Petitioner's serious plight. Prior to the decision of the Superior Court of Pennsylvania as to which review is sought, Petitioner filed another petition for habeas

corpus, his sixth, which the trial court again denied and which again was appealed to the Superior Court. The Superior Court affirmed that denial on April 23, 1997. Petitioner did not file a petition for allowance of appeal with the Pennsylvania Supreme Court because of the denial of the prior petition only a few weeks before and because of the exhaustion of funds for counsel fees. (H. Beatty Chadwick v. George Hill, Warden, Superior Court of Pennsylvania (unpublished) No. 2192 Phila.96 decided April 23, 1997).

In view of the inability to obtain relief from the state courts, Petitioner sought federal habeas corpus relief. However, this was denied on procedural grounds because petitioner had not appealed the April 23, 1997 Superior Court decision to the Supreme Court of Pennsylvania and thus the U.S. District Court concluded that Petitioner did not meet the requirement of exhaustion of state remedies. (H. Beatty Chadwick v. George Hill, Warden, United

States District Court for the Eastern District of Pennsylvania No. 96-6426 decided May 23, 1997)

REASONS FOR GRANTING WRIT

Petitioner submits that review of the decision below will provide a needed clarification of the standards of Federal due process and equal protection which must be met in connection with the exercise of the contempt power in the civil context, particularly where the sanction of imprisonment is imposed.

1. Without review, Petitioner who already has been imprisoned 27 months, is subject to indefinite imprisonment without a jury trial or other rights considered fundamental for those upon imprisonment is imposed. Moreover, the decision of the court below suggests that Petitioner is not an isolated case and that there is a need to clarify that in civil as well as criminal contempt, at least where imprisonment is imposed as is being suffered by the Petitioner, the rights secured by the sixth and

fourteenth amendments require a jury trial and other fundamental due process protections.

In Bloom v. State of Illinois, 391 U.S.194, 88 S.Ct.1477 (1968) the Court held, in a case where the contemnor had been imprisoned for two years, that the contemnor had a right to trial b jury for criminal contempt. It appears reasonably clear to Petitioner that this right and other fundamental rights of an accused in a criminal proceeding were extended to cases of civil contempt in United Mine Workers of America v. Bagwell, ___U.S.___, 114 S. Ct. 2552 (1994). In the latter decision the contempt was called civil, and involved a substantial fine. By extension, the rule also should apply to Peititoner's substantial imprisonment and should mandate his release as Petitioner was no afforded a jury trial.

The court below found no serious due process or other constitutional violations. It held that the Petitioner had and still

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has the burden of proving his assertion that he is unable to comply with the order as to which he was held in contempt. Indeed, the procedural issues aside, Petitioner's ability to so comply is the nub of the controversy in the court below. If Petitioner had had the benefits of trial and the presumptions applicable in a criminal proceeding, it would have been impossible to reach the conclusions relied upon by the court below.

Given the procedural context within which Petitioner has been judged, Petitioner has no possibility of securing an end to his imprisonment from the state courts. In addition to his petition to vacate the imprisonment, six habeas corpus petitions were denied by the trial court. Twice he has been denied relief by the Superior Court and the Supreme Court of Pennsylvania has refused to hear his appeal. The Supreme Court of Pennsylvania also denied two petitions for extraordinary relief submitted under such court's "king's bench" jurisdiction. The U.S. District Court has denied

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Petitioner federal habeas corpus relief because, although Petitione had been denied by the State Supreme Court once, he did not appeal a second denial by the State Supreme Court, thus applying the very rigorous exhaustion standards applicable to criminal defendants who already have had the benefit of a full trial in state courts.

Even after the United Mine Workers, Supra, decision it appears that state courts continue to be confused by the due process requirements applicable to civil contempt. The clarification of that issue will benefit not only the Petitioner but, these courts as well.

2. The authority of courts to impose imprisonment of indefinite duration for contempt should be limited by provisions o the eighth and fourteenth amendments.

The Petitioner submits that the power of a single judge to order indefinite confinement, subject only to his or her own decision as to termination, is repugnant to the due process and

equal protection rights secured by the fourteenth amendment. Where, as in the case where review is sought, 27 months already have been served in confinement in a civil action, a serious issue arises as to the occurrence of a violation of the rights secured by the eighth amendment as well.

The court below obviously believes that it possesses the unfettered power to order imprisonment of indefinite duration for civil contempt. Again, it appears that much of the difficulty arises from the murky distinctions made between criminal and civil contempt. In criminal contempt, which by definition punishes for contumacious acts, a definite, specified penal team is expected. (Appendix A, page 6). However, where the contempt is declared to be civil, or coercive in purpose, the courts generally appear to recognize no limit upon the period of imprisonment.,

As the court recognized in the United Mine Workers, supra, decision, the distinctions between criminal and civil contempt often

are without significant differences. Imprisonment still is imprisonment, and regardless of the labels used is punishment for those who must experience it. Under the position taken by the court below the court is in the anomalous position of treating those punished under the criminal laws less harshly than those wh have not.

Moreover, as pointed out in the United Mine Workers, supra decision, the court which adjudges contempt essentially is prosecutor, judge and jury and is hardly impartial. Thus, even where a contemnor is afforded all of the rights of a criminal defendant, if release from imprisonment nevertheless is at the whim of the judge who adjudged contempt, the issue as to lack of impartiality, and hence due process, remains.

3. The authority of the courts to use contempt and imprisonment for the sole or primary purpose of enforcing civil obligations for the payment of money should be subject to due

process and equal protection limitations.

Deprivation of liberty should be recognized as a sanction to punish for misbehavior and for no other purpose. It also should be recognized, consistent with the fifth and fourteenth amendments as a state sanction to be used to punish crimes against the state and not to enforce individual rights. Punishment of imprisonment for debt has long been abolished in the United States. It is suggested that attempts to resurrect such punishment in the guise of a contempt proceeding must be repugnant to the principles of due process and equal protection.

The case as to which review is sought illustrates one of the fundamental difficulties of using the contempt power to collect money. The trial court and the court below believe petitioner can pay; the Petitioner maintains that he cannot. The law provides many means by which money that is owed can be collected if, indeed, the debtor has the ability to pay. There is discovery in aid

of execution, execution on and attachment of assets, and wage attachment. Even the Federal Government is obliged to use such methods as opposed to imprisonment to collect taxes which are due.

In Harris v. U.S., 382 U.S.162, 86 S. Ct.352 (1965), which reviewed a federal criminal contempt proceeding, the Court recognized that the power to punish for contempt contemplated that the least power adequate to accomplish the court's objectives should be utilized. It is suggested that the Court review the decision below to address the due process issues inherent in the use of the contempt power to collect money obligations.

4. The authority to punish for contempt where there is no right to appeal the order as to which the contemnor has been held in contempt or the adjudication of contempt itself should be reviewed and found repugnant to the fourteenth amendment due process clause.

In the case as to which review is sought the court below found no due process violation even though the same court had determined that Petitioner had no right to appeal the trial court order as to which he was held in contempt or the adjudication of contempt and imprisonment itself. It is submitted that the right to appeal is a fundamental right, protected by federal due process, particularly where imprisonment has been or may be imposed as a sanction. Moreover, the same passions and lack of impartiality in the trial court that United Mine Workers, supra, pointed to in requiring a jury trial, also argue in favor of the due process right to appeal any such adjudication.

CONCLUSION

For the foregoing reasons Petitioner urges that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

H. Beatty Chadwick

H. Beatty Chadwick
Petitioner

Dated: June 26, 1997

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Barbara Jean Crowther Chadwick :IN THE SUPERIOR COURT
:OF PENNSYLVANIA

v. :

H. Beatty Chadwick, :

Appellant : No. 1555 Philadelphia, 1995

Appeal from the order dated April 21, 1995, Court of Common Pleas, Delaware County, Civil Division at No.92-19535

H. Beatty Chadwick, :

Appellant :

v. :

George Hill, Warden :

Delaware County Prison : No.3612 Philadelphia, 1995

Appeal from the Order entered October 5, 1995, Court of Common Pleas, Delaware County, Civil Division at No.95-80264

Barbara Jean Crowther Chadwick :

v. :

H. Beatty Chadwick, :

Appellant : No.3773 Philadelphia, 1995

Appeal from the Order entered October 6, 1995, Court of Common Pleas, Delaware County, Civil Division at No.95-19535

H. Beatty Chadwick, :

Appellant :

v :

Geoge Hill, Warden : No.963 Phildelphia, 1996

Delaware County Prison :

Appeall from the Order entered March 7, 1996, Court of Common Pleas, Delaware County, Criminal Division at No.95-80202

BEFORE: JOHNSON, FORD ELLIOTT AND HOFFMAN, JJ.

MEMORANDUM:

In these consolidated appeals, H. Beatty Chadwick (Husband) appeals from the orders that found him in contempt of court and denied his petitions seeking a release from incarceration. We affirm the trial court's disposition of these claims. Husband also appeals from orders directing him to produce tax returns and sign authorizations, and that denied his petition for a reduction in bail and for release through electronic home monitoring. Because these orders are interlocutory, we quash these appeals.

These actions originated in a divorce claim filed by Barbara Jean Crowther Chadwick (Wife) in 1992. During an equitable distribution conference in 1993, Wife discovered that Husband had transferred $2,502,000.00, the bulk of the marital estate, to a bank in Gibraltar without her knowledge or consent. Husband maintains that these funds were used to pay off a debt

due Maison Blanche Limited, a Gibraltar partnership, and that he no longer has control over the money. Wife filed an emergency petition to freeze the marital assets on April 29, 1994. At the hearing on this petition, Wife presented an affidavit from one of the principals of Maison Blanche that stated that $896,106.00 had been returned to the United States and deposited in an account in the name of H.B. Chadwick; that $995,726.41 had been transferred into an account in the Union Bank of Switzerland under the name of H.B. Chadwick; and that $550,000.00 in stock certificates that Husband claimed to have transferred to an unidentified barrister in England was never received by Maison Blanche. The trial court granted Wife's petition for emergency relief, ordered a freeze on all the marital funds, and ordered full disclosure of Husband's assets.

Following a second hearing in July 1994, the trial court ordered Husband to return within 24 hours the $2.5 million that had allegedly been transferred to Maison Blanche and place these

funds in an escrow account under the court's jurisdiction. The court also directed Husband to pay Wife's counsel fees, surrender his passport, and remain in Pennsylvania. In addition, the court referred the record of the proceedings to the District Attorney's Office for possible criminal prosecution of Husband.

When Husband failed to obey the court order, Wife filed a petition asking the court to hold him in contempt of court. Husband failed to appear at the three contempt hearings held in August and October of 1994. Husband was adjudicated in contempt of court and a bench warrant was issued for his arrest. Husband then filed an emergency petition to vacate the sanctions of incarceration and arrest. Husband was apprehended by sheriff's deputies in Delaware while the emergency petition was pending. Husband has been incarcerated in the Delaware County Prison since April 5, 1995. Following a hearing, the court denied his emergency petition for release from jail, found that Husband had a present ability to comply with the July 1994 order, and set a cash bail of $3 million. Husband has since filed a total of four

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petitions for writs of habeas corpus seeking a release from jail and claiming that he is unable to post bail and is unable to comply with the July 1994 order. The trial court has conducted a hearing on each petition and has declined to release Husband from jail prior to his compliance with the July 1994 order. Husband now appeals to this Court.

Husband's Appeal Docketed at No.1555 Philadelphia, 1995
Husband's Appeal Docketed at No.3612 Philadelphia, 1995

In these appeals, Husband, in essence, contends that the court erred in denying his petition to vacate the sanctions of incarceration and arrest. Husband also claims that he is illegally incarcerated because he has been in prison for more than six months on the civil contempt charge. Finally, Husband maintains that the civil contempt sanctions have lost their coercive effect, have become punitive, and thus violate Husband's right to due process under the law.

It is axiomatic that a court possesses the inherent power to enforce its orders by imposing sanctions for non-compliance.

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Travitzky v. Travitzky, 369 Pa.Super. 65, 534 A.2d 1081 (1987). Among the sanctions available to the trial court is the power to hold a party in contempt. Id.

Further, "[w]hen a party appeals a court's order holding them in contempt of court, our review is very narrow. We are limited to determining whether the trial court committed a clear abuse of discretion." Sinaiko v. Sinaiko, 445 Pa.Super. 56, 63, 664 A.2d 1005, 1009 (1995). An abuse of discretion is not shown merely by the fact that the appellate court would have decided the matter differently, but instead only when the trial court has misapplied the law or the judgement exercised is manifestly unreasonable, the result of bias, prejudice, or ill will. Keuther v. Snyder, 444 Pa.Super. 468, 471 664 A.2d 168, 169 (1995).

Contempt may be civil or criminal in nature. The defining characteristic of civil contempt is that it "'coerces with [a] conditional or indeterminate sentence of which the contemnor may relieve himself by obeying the court's order, while a criminal

adjudication of contempt punishes with a certain term of imprisonment or a fine which the contemnor is powerless to escape by compliance.'" Ingebrethsen v. Ingebrethsen 443 Pa.Super. 256, 260-61, 661 A.2d 403, 405 (1995), quoting Schnabel Assoc. v. Building and Constructions Trades council, Pa.Super. 376, 385-86, 487 A.2d 1327,1332 (1985) "A party must have violated a court order to be found in civil contempt." Sinaiko, supra at 64, 664 A.2d at 1009. When adjudicating a person to be in civil contempt, "the trial court must be convinced beyond a reasonable doubt from the totality of evidence presented that the contemnor has the present ability to comply with the order." Id. at 64-65, 664 A.2d at 1010. Should a contemnor allege that he is presently unable to purge himself of the contempt through compliance with the court's order, the contemnor then has the burden of establishing this affirmative defense. Id.

Once the dominant purpose of the contempt becomes that of punishing the contemnor for disobedience of the court's order,

the adjudication of contempt is criminal. Corzer-Chester Medical Center v. Moran, 522 Pa. 124, 560 A.2d 133 (1989). "The difference is best explained in [c]ourt house parlance; in civil contempt one has 'the key to the jail house.'" Id. at 130, 560 A.2d at 137. this distinction is important for the determination of the contemnor's procedural rights; a contemnor who will be sentenced to a term of imprisonment that he is powerless to purge through any affirmative act is entitled to the same procedural safeguards as anyone facing criminal proceedings. Id.

Husband initially maintains that the trial court did not have jurisdiction to find him in contempt of court for failure to comply with the July 22, 1994 order because he had taken an appeal of that order to this Court at the time the trial court found him to be in contempt. This contention is meritless. Rule 1701 (b) (6) of the Pennsylvanian Rules of Appellate Procedure provides that, after an appeal is taken, the trial court may "[p]roceed further in any matter in which a nonappealable

interlocutory order has been entered, notwithstanding the filing of a notice of appeal or a petition for review of the order." This Court quashed Husband's appeal as interlocutory on February 16, 1995. Thus, the trial court did not lack jurisdiction to proceed in this matter.

Husband also claims that the finding of contempt in this matter does not comply with the five-step procedure set forth in Crislip v. Harshman, 243 Pa.Super. 349, 365 A.2d 1260 (1976). However, our Court has decreed that the five-step procedure "is clearly not applicable to a situation in which the...contempt proceedings are predicated upon the violation of an order or decree which has been entered after a full hearing and which [has] been served upon the contemnor." Rouse Phila. Inc. v. Ad Hoc '78, 274 Pa.Super. 54, 74, 417 A.2d 1248, 1259 (1979), cert. denied. 449 U.S. 1004, 101 S. Ct. 545, 66 L.Ed.2d 301 (1980). The

contempt orders in the present case are predicated on the violation of the July 22, 1994 order. This order was entered after a full hearing at which Husband appeared and gave testimony, and was served on Husband at the conclusion of this hearing. Thus, under Rouse, the procedure used by the trial court in this case was not improper.

Moreover, the court held three hearings in August and October of 1994 concerning Husband's compliance with the terms of the July 22, 1994 order before holding him in contempt. Husband was finally adjudicated in contempt on November 2, 1994 for willful violations of the July 1994 order. Thus, Husband had notice of the terms of the order and the actions that he was required to take pursuant to that order. Accordingly, we cannot find that the trial court erred in adjudicating Husband to be in contempt of court.

Husband also claims that the court failed to take evidence concerning whether his failure to comply with the July 22, 1994

order was willful and whether he had the present ability to comply with this order. This claim, however, is belied by the record. The court held hearings on August 29, October 18, and October 31, 1994. Husband, although he failed to appear in person, was represented by counsel at each of these hearings. Wife established at the hearings that Husband had transferred $2.5 million to a bank in Gibraltar, that a large portion of this money was then returned to Husband's new account in the United States, that Husband purchased three annuity contracts with these funds, and that Husband later redeemed the annuities and deposited the proceeds in a Panamanian bank. The trial court found that Husband had retained control of the funds that he had squirreled out of the country and that he had the ability to comply with the July 22, 1994 order. After a review of the record, we agree with this conclusion. Thus, the court did not err in holding Husband in contempt on this basis.

Husband also maintains that the contempt sanctions

appropriate in this case are regulated by statute; namely, 42 Pa.C.S. statues 4132-4136. However, these provisions only apply to findings of criminal contempt. Because Husband was found to be in civil contempt, notwithstanding the fact that he has been incarcerated for a long period of time, these criminal contempt provisions are inapplicable to this case.

Husband next argues that he is illegally incarcerated because he has been imprisoned for more that six months. Husband's claim is based upon section 3502 of the Divorce code, which provides, in pertinent part:

> (e) Powers of the court.--If, at any time, a party has failed to comply with an order of equitable distribution...the court may, in addition to any other remedy available under this part, in order to effect compliance with its order:
>
> (6) issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order by brought before the court, at such time as the court may direct. If the court finds, after hearing, that the person willfully failed to comply with the court order, it may deem the person in civil contempt of court and, in its discretion, make an appropriate order, including, but not limited to, commitment of the person to the county jail for a period not to exceed six months[.]

23 Pa.C.S. statute 3502 (e) (6). Husband's reliance upon this section is misplaced, however, because the court has not entered an equitable distribution order. Instead, this order was entered in response to Wife's emergency omnibus petition for special relief. The divorce action has yet to proceed to an equitable distribution award.

Wife filed the emergency petition for special relief because Husband had attempted to defeat her rights in the marital property under the Divorce Code. In these actions, the court is empowered to "[e]ffectuate economic justice between [the] parties...and insure a fair and just determination and settlement of their property rights." 23 Pa.C.S. statute 3102 (a) (6). Husband argues that the six month limitation applies in the instant case because the July 22, 1994 order is "in substance an interim order of equitable distribution[.]" Brief for Appellant at 8. However, Husband offers no authority, nor has our research disclosed any, to support

this contention. Because we find that statute 3502 is inapplicable to the July 22, 1994 order and the subsequent contempt orders, that statute 3102 (a) (6) authorizes the broad use the court's equitable powers, and that Husband could reverse the adjudication of contmept by compliance with the valid court order, we find that Husband is not illegally incarcerated.

Husband next asserts that the trial court may not issue a successive contempt order without affording him due process of law. Husband anticipates that the six-month limitation on contempt orders found in 23 PaC.S. statute 3502 applies in this case, and that Wife will contend that the court may, nevertheless, continue to find Husband in contempt following the expiration of each six-month period. Our determination that section 3502 does not apply in this case, however, renders this assertion irrelevant. Accordingly, we will not reach the question of whether successive contempt orders may, in appropriate circumstances, be issued by the trial court.

Husband's final claim is that the civil contempt sanctions imposed in this case have ceased to be coercive in nature and, instead, have become punitive. Husband seemingly argues that his continued imprisonment has altered the finding from one of civil contempt to one of criminal contempt.

In the present case, Husband is clearly in contempt of the order issued July 22, 1994. This order directed Husband to (1) deposit $2.5 million in an escrow account in Delaware County; (2) refrain from further concealment of marital assets; (3) list the marital home for sale; (4) pay $75,000 on account of Wife's counsel fees and costs; (5) surrender his passport; and (6) refrain from leaving Pennsylvania. Trial Court Order, dated July 22, 1994. Husband failed to deposit the required funds into escrow., did not sign the necessary papers permitting the marital home to be listed for sale, did not pay Wife's attorney fees, failed to surrender his passport, and fled the jurisdiction, establishing a home in Delaware. The trial court held contempt hearings on August 29,

October 18, and October 31, 1994. The court inquired into Husband's ability to comply with the July 1994 order at each of these hearings. The court also conducted hearings following each of Husband's habeas corpus petitions. These hearings were designed to determine whether Husband could purge himself of the adjudication of contempt. Following each of these hearings, the trail court found that Husband had the present ability to conform to the dictates of the July 22, 1994 order. The court has found that Husband's testimony at these hearings was not credible. Trial Court Opinion, dated September 20, 1995 at 7 ("[Husband's] testimony in each of those hearings was not credible and bordered on ridiculous."); Trial Court Opinion, dated October 30, 1995, at 3 (same). We find nothing in the record before us to conclude that the trial court's determination of Husband's ability to pay is based upon bias, prejudice, or ill will. Nor did the trial court misapply the law regarding civil contempt. Because Husband clearly holds the keys to the jailhouse door, we find that the sanctions imposed

upon him have not lost their coercive effect. Thus, we affirm the orders holding him in contempt of court and denying his petitions for a writ of habeas corpus.

Order at 1555 Philadelphia 1995 is AFFIRMED
Order at 3612 Philadelphia 1995 is AFFIRMED

Husband's Appeal Docketed at No.3773 Philadelphia, 1995
Husband's Appeal Docketed at No.963 Philadelphia, 1996

At No. 3773 Philadelphia, 1995, Husband appeals the order that directed him to produce his tax return and to sign authorizations and releases that would permit Wife to obtain information regarding his financial status. In the appeal docketed at No.963 Philadelphia, 1995, Husband appeals from the denial of his motion for electronic home monitoring and the denial of his oral motion for a reduction of bail. The Pennsylvania Rules of Appellate Procedure permit an appeal as of right to this Court only from a final order of a lower court. Pa.R.A.P. 341(a). "A final order is any order that...disposes of all claims or of all parties[.]"

Pa.R.A.P. 341(b) (1). We find that the orders in question are interlocutory in nature. See, e.g., Commonwealth v. Colleran, 32 Pa. Super. 1, 469 A.2d 1130 (1983) (holding that an appeal from an order revoking bail is a non-appealable, interlocutory order). Thus, these appeals must be quashed.

Appeal at No. 3773 Philadelphia, 1995 is QUASHED.
Appeal at No. 963 Philadelphia, 1996 is QUASHED.

Barbara Jean Crowther Chadwick :IN THE SUPERIOR COURT
: OF PENNSYLVANIA
v. :
H. Beatty Chadwick, :
Appellant : No.1555 Philadelphia,1995

Appeal from the order dated April 21, 1995, Court of Common Pleas, Delaware County, Civil Division at No.92-19535

H. Beatty Chadwick, :
Appellant :
v. :
George Hill, Warden :
Delaware County Prison : No.3612 Philadelphia, 1995

Appeal from the Order entered October 5, 1995, Court of Common Pleas, Delaware County, Civil Division at No.95-80264

Barbara Jean Crowther Chadwick :
v. :
H. Beatty Chadwick, :
Appellant : No.3773 Philadelphia, 1995

Appeal from the Order entered October 6, 1995, Court of Common Pleas, Delaware County, Civil Division at No.95-19535

H. Beatty Chadwick, :
Appellant :
v. :
George Hill, Warden : No.963 Philadelphia, 1996
Delaware County Prison :

Appeal from the Order entered March 7, 1996, Court of Common Pleas, Delaware County, Criminal Division at No. 95-80202.

BEFORE: JOHNSON, FORD ELLIOTT and HOFFMAN, JJ.

Judgment

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Delaware County be, and the same is hereby ORDERS AT NOS. 1555 & 3612 PHILADELPHIA ARE AFFIRMED. APPEALS AT NOS. 3773 PHILADELPHIA 1995 & 963 PHILADELPHIA 1996 ARE QUASHED.

BY THE COURT:

/s/ David A. Szewczak

PROTHONOTARY

Dated: August 22, 1996

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

H. Beatty Chadwick,	: No. 0773 Eastern District
Petitioner	: Allocatur Docket 1996
v.	:
Barbara Crowther Chadwick,	:Petition for Allowance of Appeal
Respondent	:

ORDER

PER CURIAM

AND NOW, this 8th day of April, 1997, the Petition for Allowance of Appeal is denied.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

H. Beatty Chadwick,	: No. 0774 Eastern District
Petitioner	: Allocatur Docket 1996
v.	:
GEORGE HILL, Warden,	:
Delaware County Prison,	:Petition for Allowance of
Respondent	:Appeal

ORDER

PER CURIAM

AND NOW, this 8th day of April, 1997, the Petition for Allowance of Appeal is denied.

IN THE COURT OF COMMON PLEAS OF DELAWARE
COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Barbara Jean Crowther Chadwick: No. 92-19535
v. :
H. Beatty Chadwick :
and
William T. Chadwick :

ORDER

LABRUM, J. FILED: 4-21-95

AND NOW, this 21st day of April, 1995, upon consideration of Husband's Emergency Petition for Vacation of Sanctions of Incarceration and Bench Warrant, to Remand Proceedings to a Hearing Officer and for a Continuance, and Wife's answer thereto, and after argument thereon this date, it is hereby ORDERED and DECREED that:

1. Count I of Husband's Emergency Petition requesting vacation of the sanctions of incarceration and arrest are denied.

2. Count II of Husband's Emergency Petition requesting a remand to a hearing officer is granted

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

H. BEATTY CHADWICK	:	NO. 95-80264
vs.	:	
GEORGE HILL, WARDEN	:	
DELAWARE COUNTY	:	
PRISON	:	

ORDER

AND NOW, to wit, this 5th day of October, 1995, it is hereby ORDERED and DECREED that Petitioner's Petition for Writ of Habeas Corpus is DENIED.

It is further ORDERED and DECREED that the Intervenor's Petition for Contempt and for Writ of Ne Exeat filed under the Divorce Action #92-19535 are held in abeyance.

BY THE COURT:

/s/ Joseph F. Battle

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Barbara Jean Crowther Chadwick, Plaintiff	:	No. 92-19535
H. Beatty Chadwick, Defendant	:	IN DIVORCE

ORDER

Counsel for the parties were advised by this Court that a hearing would be held on Barbara Jean Crowther Chadwick's Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum on Monday, October 31, 1994 at 10:00AM. Defendant, H. Beatty Chadwick was personally served with a subpoena directing his appearance at that hearing and his attorney was served with a Notice to Attend and to Produce directing H. Beatty Chadwick's appearance at that hearing. Defendant, H. Beatty Chadwick, was represented by David Auerbach at that hearing on October 31, 1994. Defendant, H. Beatty Chadwick, did not appear at the hearing on October 31, 1994.

Upon consideration of the Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum, and after hearing thereon, it is hereby ORDERED and DECREED as follows:

1. H. Beatty Chadwick is held in Contempt of Court for willful violations of the Order of July 22, 1994. He is to be apprehended and incarcerated until a further hearing is held.

2. Because of defendant H. Beatty Chadwick's failure to appear at the scheduled October 31, 1994 hearing, notwithstanding valid service of a subpoena directing his appearance, this Court has issued a bench warrant for H. Beatty Chadwick's arrest. Said bench warrant shall not be rescinded without the approval of the undersigned judge. When apprehended, defendant, H. Beatty Chadwick, shall be incarcerated until a further hearing is held.

3. Defendant, H. Beatty Chadwick, is hereby enjoined from selling or in any way profiting from the release, publication,

writing or other dissemination of the facts which are the subject of this litigation and any such rights or benefits are assigned to plaintiff, Barbara Jean Crowther Chadwick.

4. This matter is again referred to the Delaware County District Attorney's office and the United States Attorney's Office for possible prosecution of criminal charges against defendant, H. Beatty Chadwick.

5. Defendant, H. Beatty Chadwick, is again ordered to surrender his United States passport to this Court until further order. The State Department shall be notified of this Order and of the July 22, 1994 order so that appropriate action may be taken, including the placing of a hold on H. Beatty Chadwick's United States passport. This Court has previously ordered that H. Beatty Chadwick shall not leave the Commonwealth of Pennsylvania, and shall not leave the United States.

6. This matter is referred to the Disciplinary Board of the Supreme Court of Pennsylvania for investigation of the ethical

violations by H. Beatty Chadwick. This Court recommends to the Disciplinary Board that H. Beatty Chadwick's license to practice law be suspended as soon as possible.

DATED this 31st Day of October, 1994 at Media, Delaware County, Pennsylvania.

BY THE COURT

/S/ Joseph T. Labrum
11-2-94

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

Barbara Jean Crowther Chadwick:		No. 92-19535
Plaintiff	:	
v.	:	IN DIVORCE
	:	
H. Beatty Chadwick		:ATTORNEYS NOS.
Defendant		:04774/35386/63126

ORDER

AND NOW, this 22nd day of July 1994, upon consideration of Wife's Emergency Omnibus Petition for Special Relief, it is hereby ORDERED and DECREED that:

1. Within twenty-four (24) hours of the entry of this Order, H. Beatty Chadwick is directed to return the $2.5 million that he transferred out of the United States in February, 1993, to an account under the jurisdiction of this court, to be held in escrow by counsel for Barbara Jean Crowther Chadwick and counsel for H. Beatty Chadwick pending further Order of the Court.

2. Husband is enjoined from further assigning, concealing, secreting or dissipating marital assets;

3. The marital home located at 280 Roberts Road, Bryn Mawr, Pennsylvania, shall immediately be listed for sale by a court-appointed third party;

4. Husband is directed to pay, forthwith on account of Wife's counsel fees and costs the amount of $75,000.00;

5. Husband is directed to surrender his passport to this Court pending further Order of the Court;

6. Husband is enjoined from leaving the jurisdiction of this Commonwealth until further Order of Court.

7. This matter including a transcript of the testimony shall be referred to the Delaware County District Attorney's Office and to the U.S. Attorney for consideration of possible ons of criminal charges.

BY THE COURT:

/s/ Joseph T. Labrum

Supreme Court, U.S.
FILED
AUG 22 1997
CLERK

No. 97-139

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

H. BEATTY CHADWICK,

Petitioner,

v.

R.D. ANDREWS, SUCCESSOR TO GEORGE HILL, WARDEN, DELAWARE COUNTY PRISON,

Respondent,

and

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

On Petition for Writ of Certiorari to the Superior Court of Pennsylvania

BRIEF IN OPPOSITION FOR RESPONDENT BARBARA JEAN CROWTHER CHADWICK

Albert Momjian, Esquire*
Kevin C. McCullough, Esquire
Amy M. Winebrake, Esquire
Attorneys for Respondent,
Barbara Jean Crowther Chadwick
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(215) 751-2000
Of Counsel.

17 pp

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Do the Sixth and Fourteenth Amendments to the United States Constitution require that a jury trial and other rights afforded to a criminally accused be provided to a civil contemnor who, as a result of his civil contempt, is incarcerated for the sole purpose of coercing him into compliance with the court order?

2. Does the Eighth Amendment to the United States Constitution, by virtue of the Fourteenth Amendment, prohibit a state court from incarcerating a civil contemnor for an indefinite period of time where the sole purpose of the imprisonment is to coerce the contemnor into complying with a court order with which he is fully able to comply?

3. Does the Fourteenth Amendment to the United States Constitution prohibit a state court from imprisoning a civil contemnor who fails and refuses to comply with a court order, despite his ability to do so, where the contemnor received notice of the order with which he was required to comply, and refused to appear at multiple hearings on the issue of his compliance with the order despite having notice of those hearings?

4. Does the Fourteenth Amendment to the United States Constitution prohibit a state court from adjudicating a person in civil contempt of a court order, which is not a final order and which, pursuant to the state rules of appellate procedure, is not appealable?

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B. Husband's continued incarceration for failure and refusal to comply with the July 22, 1994 Order does not violate the Eighth Amendment since the purpose of the incarceration is to coerce Husband into compliance with the Order. 9

C. Husband's continued incarceration for his failure and refusal to comply with the July 22, 1994 Order does not violate any rights secured by the Fourteenth Amendment to the United States Constitution. 10

D. The trial court did not violate any rights secured under the Fourteenth Amendment by adjudicating Husband in contempt of the July 22, 1994 Order which was interlocutory and not appealable under the Pennsylvania Rules of Appellate Procedure. 12

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COUNTER-STATEMENT OF CASE

Petitioner, H. Beatty Chadwick (hereinafter "Husband"), is currently incarcerated in the Delaware County Prison after being adjudicated in civil contempt of a July 22, 1994 Order entered by the Honorable Joseph T. Labrum, Jr. of the Delaware County Court of Common Pleas of the Commonwealth of Pennsylvania. Judge Labrum's July 22, 1994 Order was entered in connection with a divorce action initiated by Respondent Barbara Jean Crowther Chadwick (hereinafter "Wife"), which action is pending in the Court of Common Pleas of Delaware County. The Order directed Husband to, *inter alia,* return to an account under the jurisdiction of the court approximately $2.5 million in marital assets that he had fraudulently transferred outside the United States in an attempt to defeat Wife's economic claims under the Pennsylvania Divorce Code, 23 Pa. C.S.A. § 3101, *et seq.*

Briefly, by way of background, Husband's fraudulent scheme began immediately prior to a support conference scheduled in February 1993 in connection with the divorce action. At the conference, Husband represented that he had transferred $2,502,000 of marital assets titled in his name (including $896,106 from an individual retirement account) to purportedly satisfy an alleged debt with a Gibraltar partnership known as Maison Blanche Limited with which he claimed to have entered into a joint venture agreement in August 1990. The $2,502,000 transferred by Husband represented the bulk of the parties' marital estate. Throughout various hearings in the divorce action, Husband maintained that the $2,502,000 had been transferred in satisfaction of a valid debt and that he no longer had any control over the money.

In order to protect her right to equitable distribution, and after Wife had filed an action in Gibraltar which resulted in an Order compelling the principals of Maison Blanche to reveal the whereabouts of the funds transferred from Husband, Wife filed in the Delaware County divorce action an Emergency Petition to Freeze Marital Assets which included an Affidavit from one of the principals of Maison Blanche Limited which disclosed the return of the $896,106 to the United States to an account in the name of "H.B. Chadwick." The Affidavit fur-

ther revealed that $995,726.41 was sent from Gibraltar to Union Bank of Switzerland (Luxembourg) and that Maison Blanche no longer had any control over those funds. Finally, the Affidavit indicated that some $550,000 in stocks which Husband claimed to have transferred to an acquaintance in England was never sent to Gibraltar. After a hearing on Wife's Emergency Petition on April 29, 1994, and after considering the Affidavit, the Honorable Kenneth A. Clouse of the Delaware County Court of Common Pleas entered an Order directing a freeze of any funds that were located and the full disclosure by the financial institutions that were identified in the Affidavit.

Wife obtained documentation from the various financial institutions and a further hearing was held on July 22, 1994 before the Honorable Joseph T. Labrum of the Delaware County Court of Common Pleas at which time both Husband and Wife testified. At the July 22, 1994 hearing, Wife clearly established that Husband had fraudulently transferred the marital assets and retained control over these assets. For example, Wife presented evidence that, less than 60 days after the initial transfer of the $2.5 million to Maison Blanche, $869,106 was returned to the United States to an account at Chemical Bank in New York for the benefit of "H.B. Chadwick." Additionally, Wife established that less than three (3) months after the initial transfer to Maison Blanche, Husband purchased three (3) insurance annuity contracts with the $869,106 that had been returned to the United States into an account in his name at Chemical Bank in New York.

Wife also established at the hearing that in May 1994, only days after the entry of the Order by Judge Clouse on April 29, 1994 which enjoined Husband from "further assigning, concealing, secreting or dissipating marital assets," Husband had redeemed the three insurance annuity contracts and directed that the funds be returned to him at a post office box in Shiresmantown, Pennsylvania, which happened to be the hometown of Husband's then girlfriend. Subsequently, these funds were deposited in Banco Mercantil del Istmo in Panama. Although Husband denied that he had requested and authorized the liquidation of his annuity contracts, his signa-

ture on at least one of the letters requesting such liquidation had been guaranteed on two separate occasions by an employee of PNC Bank who positively identified Husband as the individual who had asked for the signature guarantee.

At the conclusion of the July 22, 1994 hearing, Judge Labrum entered an Order which stated:

> Within twenty-four hours of the entry of this order, H. Beatty Chadwick is to return the $2.5 million dollars that he transferred out of the United States in February, 1993 to an account under the jurisdiction of this Court, to be held in escrow by counsel for Barbara Jean Crowther Chadwick and counsel for H. Beatty Chadwick pending further order of this Court. . . . Husband is directed to pay forthwith on account of wife's counsel fees and costs the amount of $75,000.00. . . . Husband is directed to surrender his passport to this Court pending further order of this Court.

Husband attempted to appeal this Order to the Superior Court of Pennsylvania, but the appeal was quashed as interlocutory.[1]

Husband failed to comply with the July 22, 1994 Order and Wife filed a Petition for Contempt. A series of contempt hearings were scheduled on August 29, 1994; October 18, 1994; and October 31, 1994. Despite notice of these hearings and even after service of a subpoena requiring his appearance at the October 31, 1994 hearing, Husband failed to attend any of the proceedings. On October 31, 1994, the Court found Husband in contempt of the July 22, 1994 Order. On November 2, 1994, Judge Labrum directed that Husband be apprehended and incarcerated until he complied with the July 22, 1994 Order. After entry of the November 2, 1994 Order, Hus-

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1. It should be noted that Husband mistakenly refers to the July 22, 1994 and the October 31, 1994 Orders as attempts by the court to use its contempt powers to "collect" money from Husband. Again, the July 22, 1994 and October 31, 1994 Orders do not require Husband to *pay* money as if he had been fined. Rather, they require Husband to *return* money ($2.5 million in marital assets) which he fraudulently transferred outside the United States.

band fled the jurisdiction of Pennsylvania and avoided apprehension by taking up residence in the State of Delaware. Husband was finally apprehended by sheriffs after a violent struggle and has been incarcerated in the Delaware County Prison since April 5, 1995. Just prior to his arrest, Husband filed with the trial court a Petition to Vacate the November 2, 1994 Order, which was denied by the court on April 21, 1995. Husband appealed the April 21, 1995 Order to the Superior Court of Pennsylvania, as further discussed below.

After filing two unsuccessful Petitions for Writ of Habeas Corpus, Husband filed a third Petition for Writ of Habeas Corpus which was denied by the Honorable Joseph F. Battle by Opinion and Order dated September 20, 1995. In his Opinion and Order, Judge Battle specifically found that Husband's alleged payment of a debt to the company in Gibraltar was "merely a sham designed to mislead the Court and deprive [Wife] to her right of equitable distribution of martial property[,]" and that it was "abundantly clear that [Husband] still has control over the disputed marital funds and certainly has the ability to comply with Judge Labrum's July 22, 1994 order."

Husband's fourth Petition for Writ of Habeas Corpus was presented to Judge Battle on October 5, 1995. After the hearing, Judge Battle entered an Order denying Husband's Petition for Writ of Habeas Corpus. On October 30, 1995, Judge Battle issued an Opinion with respect to the Court's Orders of September 20, 1995 and October 5, 1995 which denied Husband's third and fourth Petitions for Habeas Corpus, respectively. The October 30, 1995 Opinion incorporated the Court's Orders and Opinions entered September 20, 1995; April 21, 1995; November 2, 1994; and July 22, 1994. Among other things, Judge Battle reiterated the court's previous determination that Husband was attempting to "fraudulently thwart" Wife's right to economic claims and that the testimony of Husband presented at the hearing on his third Petition for Writ of Habeas Corpus lacked credibility. Husband appealed the October 5, 1995 Order.

At each hearing on Husband's Petitions for Writ of Habeas Corpus, Husband was afforded the opportunity to

comply with the July 22, 1994 Order or to demonstrate that compliance was impossible. Husband never presented any credible evidence and, in fact, continued to refuse to even acknowledge the overwhelming evidence of Husband's fraudulent conduct presented by Wife at the prior hearings, evidence which clearly showed that Husband had a clear ability to comply with the trial court's July 22, 1994 Order.

Husband's appeals of the April 21, 1995 Order and the October 5, 1995 Order were consolidated before the Superior Court of Pennsylvania and oral argument was held on May 14, 1996. By Order and Memorandum dated August 22, 1996, the Superior Court of Pennsylvania affirmed the trial court's Orders. Husband filed a Petition for Allowance of Appeal of the August 22, 1996 decision which was denied by the Supreme Court of Pennsylvania on April 8, 1997.

Husband filed a sixth Petition for Writ of Habeas Corpus in the Court of Common Pleas of Delaware County requesting his immediate release from prison. Following hearings on May 30, 1996 and June 3, 1996, the trial court denied the Petition on June 21, 1996. Husband appealed the June 21, 1996 Order and the Superior Court of Pennsylvania affirmed the decision on April 23, 1997. In its opinion, the Superior Court specifically invited the Supreme Court of Pennsylvania to review its decision and the issues raised in Husband's appeal.[2]

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2. In his appeal, Husband argued that his release was required since he believed his continued incarceration had become punitive rather than coercive. Husband asserted that because there was no "realistic possibility" that he would ever comply with the July 22, 1994 Order, his release was mandated. In its opinion affirming the trial court's denial of Husband's Petition for Writ of Habeas Corpus, the Superior Court specifically invited the Supreme Court of Pennsylvania to review its decision and address Husband's argument, stating,

> [Husband] admits that no court in this jurisdiction has adopted [the 'realistic possibility'] test and we will not do so here. While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to made such a determination.

The court noted that "[e]ven if such a test was (sic) adopted, [Husband's] claim would still fail."

However, Husband chose not to file a Petition for Allowance of Appeal with the Pennsylvania Supreme Court.[3]

On or about September 23, 1996, Husband filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Pennsylvania. On November 1, 1996, Chief Magistrate Judge Richard A. Powers, III issued a Report and Recommendation dismissing Husband's Petition due to his failure to exhaust state court remedies. Husband filed objections to the Report and Recommendation and, on January 16, 1997, an Order was entered by the Honorable Norma L. Shapiro adopting the Report and Recommendation and dismissing Husband's Petition for Writ of Habeas Corpus. Husband filed a Petition for Reconsideration and on May 23, 1997, Judge Shapiro denied this petition. In her May 23, 1997 Order, Judge Shapiro specifically referred to the Superior Court's April 23, 1997 invitation to the Supreme Court to review the decision. Judge Shapiro again determined that Husband had failed to exhaust his state court remedies because he had not, at that time, filed a Petition for Allowance of Appeal with the Supreme Court.

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3. Husband's claim that his failure to file a Petition for Allowance of Appeal was due, in part, to the exhaustion of funds for counsel fees is ludicrous. Aside from the fact that he presently has control over $2.5 million in marital assets, Husband, who is himself a lawyer, has been representing himself, filing one petition after another, and filed the prior petition for allowance of appeal *pro se*.

ARGUMENT

The Petition for Writ of Certiorari does not present any issue warranting review by this Court. Husband purports to raise constitutional objections to his incarceration on the basis that such incarceration is in violation of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. With respect to these issues, the law is clear and well established, and there is no issue presented worthy of the exercise of this Court's discretion. The decision of the Superior Court of Pennsylvania is consistent with the decisions of this Court and properly applies the law. Moreover, Husband has failed to exhaust his state court remedies and to allow the Pennsylvania Supreme Court the opportunity to rule on these issues.

A. The Sixth Amendment to the United States Constitution, which provides that an accused in a criminal proceeding is entitled to, *inter alia*, a jury trial, does not apply to cases of civil contempt in which the contemnor is imprisoned for failure and refusal to comply with a court order.

Husband claims that as a civil contemnor, who is refusing to comply with a court order, he should be afforded the same protections provided to an accused in criminal proceedings, specifically those under the Sixth Amendment. Because the Sixth Amendment applies only to criminal actions, it is not applicable to this case.

The Sixth Amendment provides, in part: "In all *criminal prosecutions*, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." U.S. CONST. amend. VI. Husband has argued to the various courts involved in this case, and is attempting to represent to this Court, that his imprisonment is a criminal sanction and that, therefore, he should be afforded the same protections provided to an accused in a criminal action. The law is clear that where a sentence of imprisonment is a result of civil contempt and it is conditional in nature, indictment and jury trial are not constitutionally required. *Shillitani v. United States*, 384 U.S. 364, 365 (1966). As noted by this Court in *Shillitani*, it is not the fact of punishment, but rather its character and purpose that serve to

distinguish civil contempt from criminal contempt. *Id.* at 369 (citing *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911). "There can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Id.* at 370. Thus, it is the conditional nature of the imprisonment, which is based entirely upon the contemnor's continued defiance, that justifies holding civil contempt proceedings without the need for indictment and jury. *Id.* at 370-71.

In his Petition, Husband fails to cite any civil contempt case that supports his position; rather, he relies exclusively upon criminal contempt cases: *Bloom v. State of Illinois*, 391 U.S. 194 (1968); *Harris v. United States*, 382 U.S. 162 (1965); *United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994). One of the many misrepresentations Husband presents in his Petition is that through its decision in *United Mine Workers*, this Court extended the law so as to provide a civil contemnor with the same rights provided to a criminal contemnor, *e.g.*, a jury trial. Husband suggests that in *United Mine Workers*, the "contmept (sic) was called civil, and involved a substantial fine." This is a complete misstatement. In *United Mine Workers*, this Court specifically stated: "We conclude that the serious contempt fines imposed here were *criminal* and constitutionally could not be imposed absent a jury trial." 512 U.S. at ____, 129 L.Ed. at 659 (emphasis added).

Moreover, in *United Mine Workers*, this Court took great pains to explain the distinction between civil and criminal contempt.

> Criminal contempt is a crime in the ordinary sense . . . and criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings. . . . *In contrast*, civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. *Neither a jury trial nor proof beyond a reasonable doubt is required.*

Id. at ____; 129 L.Ed. at 650 (emphasis added).

It is clear that Husband's confinement is a civil contempt sanction and there is no requirement that he be afforded a jury trial or any other rights available to an accused in a criminal proceeding. Husband's confinement is not "punishment." The trial court has determined, after reviewing all of the evidence presented to it, that Husband fraudulently transferred $2.5 million in marital assets in order to thwart Wife's economic claims associated with the divorce. The trial court further determined that Husband has had, at all times, control over the funds and the ability to comply with the July 22, 1994 Order requiring him to return these assets. The provisions of the Sixth Amendment are inapplicable to this case and cannot serve as a basis for jurisdiction by this Court.

B. Husband's continued incarceration for failure and refusal to comply with the July 22, 1994 Order does not violate the Eighth Amendment since the purpose of the incarceration is to coerce Husband into compliance with the Order.

Husband's claim that his continued imprisonment for failure to comply with a court order should be limited by provisions of the Eighth Amendment is similarly unsupported by well established law. Once again, the determinative factor with respect to this issue is the purpose served by Husband's incarceration. Because Husband's incarceration is for coercive purposes, and not "punishment," the Eighth Amendment is not implicated and his incarceration cannot be considered "cruel and unusual punishment." *Austin v. United States,* 509 U.S. 602, 610 (1993).

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. As recognized by this Court, "An examination of the history of the Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes." *Ingraham, et al. v. Wright, et al.,* 430 U.S. 651, 664 (1977). In the few cases where this Court has addressed the issue of whether the cruel and unusual punishment prohibition provided for in the Eighth Amendment is applicable to civil rem-

edies, the Court has easily found the Eighth Amendment inapplicable. *See, e.g., Uphaus v. Wyman,* 360 U.S. 72 (1959) (holding that incarceration of civil contemnor pending compliance with subpoena is not subject to the Eighth Amendment); *Fong Yue Ting v. United States,* 149 U.S. 698 (1893) (holding the Eighth Amendment inapplicable to deportation of aliens since deportation is not a punishment for crime).

The application of the Eighth Amendment to the civil contempt remedy of imprisonment was addressed by this Court in *Uphaus v. Wyman.* In *Uphaus,* the petitioner was confined for his failure and refusal to produce documents called for in subpoenas. Quoting *Green v. United States,* 356 U.S. 165, 197 (1958) (dissenting opinion), this Court explained:

> Before going any further, perhaps it should be emphasized that we are not at all concerned with the power of courts to impose conditional imprisonment for the purpose of compelling a person to obey a valid order. Such coercion, where the defendant carries the keys to freedom in his willingness to comply with the court's directive, is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees.

Id. at 81. On this basis, the *Uphaus* Court specifically stated that if the petitioner continued to disobey the subpoena, his continued incarceration to secure compliance with the subpoena would be constitutionally proper. *Id.* at 82.

The purpose of Husband's incarceration is to coerce his compliance with the July 22, 1994 Order. Husband's incarceration is not punishment and, therefore, the Eighth Amendment is inapplicable to this matter.

C. Husband's continued incarceration for his failure and refusal to comply with the July 22, 1994 Order does not violate any rights secured by the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment to the United States Constitution prohibits a state from depriving a person of life, liberty,

or property without due process of law. Husband has not been deprived of any protected rights without due process of law. Husband's incarceration results solely from his continuing refusal to comply with the July 22, 1994 Order. Husband holds the keys to his jail cell and he can free himself at any time. The procedural history of this case makes clear that Husband has been afforded complete due process of law throughout the lower court proceedings.

As already noted, by Order dated October 31, 1994, Husband was adjudicated in contempt of the July 22, 1994 Order and the trial court ordered his incarceration. Husband appealed the October 31, 1994 Order, and the Superior Court quashed the appeal on the basis that the order was interlocutory. Husband subsequently filed an Emergency Petition for Vacation of Sanctions of Incarceration and Bench Warrant which was denied by the trial court on April 21, 1995. Husband appealed the April 21, 1995 Order, and the Order was affirmed by the Superior Court by Memorandum and Order dated August 22, 1996. On April 8, 1997, the Supreme Court of Pennsylvania denied Husband's Petition for Appeal of the August 22, 1996 Order, and Husband filed the Petition for a Writ of Certiorari presently before this Court. In addition to appealing the April 21, 1995 Order, Husband also filed with the Supreme Court of Pennsylvania a Petition for Writ of Mandamus seeking his release from prison and that Petition was denied by Order dated September 24, 1996.

Further, the October 31, 1994 Order was predicated on Husband's violation of the July 22, 1994 Order. As already noted, the July 22, 1994 Order was entered after a full hearing at which Husband appeared and gave testimony, and the order was served on Husband at the conclusion of the hearing. Prior to the October 31, 1994 adjudication of contempt, three hearings were held in August and October of 1994 concerning Husband's compliance with the July 22, 1994 Order. Despite having notice of all three hearings, and having been served with a subpoena to appear at the October 31, 1994 hearing, Husband failed and refused to attend any of the hearings. Husband was, however, represented by counsel at each of these hearings.

Contrary to Husband's assertion, the July 22, 1994 and the October 31, 1994 Orders were not attempts by the court to use its contempt powers to "collect" money from Husband. The July 22, 1994 and October 31, 1994 Orders do not require Husband to *pay* money as if he had been fined, rather, they require Husband to *return* money ($2.5 million in marital assets) which he fraudulently transferred outside the United States. It was well within the trial court's powers to adjudicate Husband in civil contempt of the July 22, 1994 Order and in doing so, the trial court provided Husband with due process of the law.

D. The trial court did not violate any rights secured under the Fourteenth Amendment by adjudicating Husband in contempt of the July 22, 1994 Order which was interlocutory and not appealable under the Pennsylvania Rules of Appellate Procedure.

In addition, contrary to Husband's assertion, the right to appeal is not a fundamental right. The Pennsylvania Rules of Appellate Procedure permit an appeal as of right to the Superior Court only from a final order of a lower court. Pa. R.A.P. 341(a). "A final order is any order that ... disposes of all claims or of all parties[.]" Pa. R.A.P. 341(b)(1). The July 22, 1994 Order which required, *inter alia*, the return of the $2.5 million in marital assets, was not a final order but rather an interlocutory order and, therefore, non-appealable pursuant to Rule 341 of the Pennsylvania Rules of Appellate Procedure. It was an order properly entered by the trial court pursuant to the court's inherent powers and the powers granted under the Pennsylvania Divorce Code. Husband has not been deprived of his right to appeal a final decision in the divorce action.

Further, between all of Husband's appeals and petitions for writ of habeas corpus, Husband has had the opportunity to contest the validity of the July 22, 1994. Moreover, after Wife established Husband's ability to comply with the July 22, 1994 Order, Husband has been provided with an opportunity to comply with the July 22, 1994 Order and/or to present evi-

dence as to his alleged inability to comply with the Order at each of the subsequent habeas corpus hearings held before the trial court.

Husband was clearly afforded due process of the law as required under the Fourteenth Amendment to the United States Constitution and a grant of *certiorari* on this basis is not warranted.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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No. 97-139

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

H. Beatty Chadwick, Petitioner
v.
R.D. Andrews, successor to George Hill,
Warden, Delaware County Prison, Respondent
and
Barbara Crowther Chadwick, Respondent

ON WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

REPLY TO BRIEF IN OPPOSITION FOR RESPONDENT BARBARA CROWTHER CHADWICK

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RESPONDENT'S COUNTER-STATEMENT OF THE CASE IS INACCURATE AND MISLEADING

Respondent claims to have "clearly established that Husband (Petitioner) had fraudulently transferred" and "retained control over" $2,500,000 in assets (Brief in Opposition, p.2) which the trial court ordered Petitioner to pay into a court administered account. Thus, Respondent concludes that the state court may properly imprison Petitioner who now has been imprisoned 29 months, for an indefinite period until he makes the required payment. Although Petitioner suggests that, for the reasons set forth in the Petition, his Petition for review is equally meritorious whether or not Respondent's version of the facts is correct, the record demonstrates that Respondent's version of the facts is most definitely not correct, and thus there exists an even more compelling need for the Court to clearly set forth the standards of due process which should be applied in civil contempt proceedings.

There has been no dispute that in February 1993 Petitioner paid $2,502,000 pursuant to a pre-existing joint venture contract to Maison Blanche Limited, a Gibraltar Corporation (not a partnership, as Respondent stated), which was an unrelated third party. The joint venture contract and acknowledgement of payment are part of the record. No evidence has been presented that the payee was controlled by Petitioner or that the payment was other than what it purported to be, and thus Respondent's contention that the monies were fraudulently transferred are completely without factual support.

Respondent claims that Petitioner has retained control over the monies paid to Maison Blanche Limited based upon an affidavit of an individual, unknown to Petitioner, who represented that he was a director of the company. The affidavit was admitted into evidence by the trial court over Petitioner's objection, as its authenticity, the authority of the affiant to make the affidavit on behalf of the company and the truth of the matters stated therein were not established nor was the affiant subject to cross examination.

Issues of admissability aside, the affidavit purported to set forth transfers of funds by Maison Blanche Limited following the receipt of Petitioner's payment in February, 1993. Contrary to the statements by the Respondent (Brief in Opposition, pp.1, 2), the affidavit does not state that such transfers were to any accounts in the name of or controlled by Petitioner, or made at the direction of Petitioner.

The affidavit further stated that the affiant was not aware of the receipt from Petitioner of share certificates of a value of US $532,000 which constituted a portion of Petitioner's payment. Petitioner testified that, pursuant to an agreement with the company, such certificates were delivered to the company's solicitor (not an acquaintance of Petitioner, except as to this transaction, as claimed by Respondent), who acknowledged receipt thereof. Proof of such delivery by Petitioner's broker also was a matter of record. Petitioner admitted that in April 1993 he signed documents at the request of Maison Blanche Limited to purchase as a straw party certain annuity investment contracts, which were not thereafter in his possession and in which he had no beneficial interest. Petitioner denied receiving any proceeds therefrom. Respondent's

claims that Petitioner redeemed the contracts and directed that the funds be returned to him are completely unsupported by the record, and the statement that Respondent "established" such facts is simply incorrect.

When on July 22, 1994, the trial court ordered Petitioner (Petition, B-5) to pay $2,500,000 into a court administered account, no findings of fact were made. Petitioner testified that he did not control the funds paid to Maison Blanche Limited and was unable to comply. This evidence was uncontroverted at the time the trial court adjudicated Petitioner in contempt on November 2, 1994 (Petition, B-1) the court did not receive any evidence as to Petitioner's ability to comply or whether compliance had occurred. Indeed, the trial court imposed no condition, upon the fulfillment of which Petitioner could be released from imprisonment; the order of imprisonment simply provides for Petitioner's incarceration "until a further hearing is held." (Petition, B-2).

Respondent states, incorrectly, that a "series of contempt hearings" were scheduled by the trial court prior to the order which directed Petitioner's imprisonment. (Brief in Opposition, P.3) A hearing was held August 29, 1994 on Respondent's petition for contempt. The trial court disposed of the petition and adjudged Petitioner in contempt at that time, but imposed no sanction. On October 18, 1994 the trial court held a hearing in the underlying divorce proceeding which concerned the sale of real property and the attachment of trust proceeds payable to Petitioner. The contempt was not considered. Prior to October 31, 1994 the trial court, on its own motion, notified Petitioner that a hearing on a "petition for contempt" would be held on October 31, 1994. There was no such

petition, however, and Petitioner had no other notice as to the purpose of the hearing, the remedies sought, or the bases therefor.

When Petitioner's appeal of the adjudication of contempt and imprisonment was quashed by the Pennsylvania Superior Court because the adjudication was deemed interlocutory, Petitioner sought collateral relief through petitions, the denial of which are the subject of the Petition for review. The Respondent points out that the trial court, in denying Petitioner's application for habeas corpus, remarked as to the "evidence which clearly showed that husband (Petitioner) had a clear ability to comply with the trial court's July 22, 1994 Order." (Brief in Opposition, P.5). In fact, however, the record is bare of <u>any</u> evidence in the collateral relief proceedings that Petitioner controlled the funds at issue or could comply with the trial court's order to pay them. There simply was no basis in fact for the trial court's conclusions on this point. Upon appeal, the Pennsylvania Superior court compounded this error by declining to disturb the findings of the trial court in the absence of bias, prejudice, or ill will. (Petition, A6, 16)

> <u>The sixth and fourteenth amendments to the United States Constitution should require a state court to extend a person confined indefinitely, now 29 months, the rights afforded to a criminal accused.</u> Respondent's argument to the contrary is repugnant to fundamental notions of due process.

Respondent's position is based upon the assumption of a material fact, which has not been proven of record, namely, that Petitioner controls and therefore is capable of paying the monies the trial court has ordered him to pay, where a person

is unable to perform an act ordered by a court, clearly the court may not hold him in contempt for non-performance McPhaul v. United States, 364 U.S. 372, 81 S.Ct.138 (1960). The difficulty is that the determination of Petitioner's ability to comply, that fact upon which Petitioner's liberty now depends, has been made by the same court that ordered him to make the payment and adjudicated his contempt and imprisonment.

The Court long has been concerned about the potential for abuse of the contempt power. Harris v. United States, 382 U.S.162, 86 S.Ct. 352 (1965); Bloom v. State of Illinois, 391 U.S. 194, 88 S.Ct. 1477 (1968). In United Mine Workers of America v. Bagwell, 512 U.S. 821, 114 S. Ct. 2552 (1994) the Court extensively reviewed the possibilities for abuse in a civil contempt proceeding. The Court pointed out that unlike areas of the law where a legislature defines both the sanctionable conduct and the penalty, "civil contempt proceedings have the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." For this and other reasons relating to the severity of the penalty, discussed infra, the Court concluded that a jury trial was required. In the case for which review is sought the factual issue like the issues in United Mine Workers clearly was not decided by an unbiased factfinder. Moreover, the mischief was compounded by the refusal of the reviewing court to disturb the fact finding of the trial judge in the absence of bias, prejudice, or ill-will. (Petition, A-6, 16)

Once Respondent makes the unsupported assumption that the Petitioner is able to comply with the trial court's order and has been adjudicated in contempt by reason of his failure to do so, Respondent then concludes that the contempt at issue is "civil", as opposed to

"criminal" contempt. Thus, Respondent maintains that Petitioner's case is governed by the rule set forth in Gompers v. Bucks Stove & Rance Co., 221 U.S. 418, 31 S.Ct. 492 (1911), namely that where contempt is criminal, or intended to punish for past conduct, criminal due process rights apply, but where contempt is civil, or intended to coerce future conduct, criminal due process rights do not apply.

Petitioner submits that, as a result of the Court's decision in United Mine Worker's, supra, the applicability or not of criminal due process rights depends not so much upon the intention of the court which imposes the sanction for contempt as upon the nature and severity of the sanction. In United Mine Workers, the court held that a labor union sanctioned with substantial fines for the alleged violation of a labor injunction which the trial court characterized as civil penalties, was nevertheless entitled to a jury trial and other rights afforded to a criminal accused because the sanction was a criminal sanction.

The Respondent incorrectly characterizes this case as one involving criminal contempt and thus declares it inapposite because the labels "criminal" and "civil" have such different consequences the parties to the United Mine Workers case attempted to analyze the facts there involved on one or the other side of that issue. Ultimately, the Court determined it was unclear whether the sanction was civil based upon the intended purpose. However, the Court concluded that the serious nature of the fines imposed made the proceedings subject to the protections afforded a criminal defendant. It was in that context that the Court stated "We conclude that the serious contempt fines imposed here were criminal and could not be imposed absent a jury trial." Petitioner submits that the lengthy and

indefinite imprisonment to which he has been subject clearly is a "serious" sanction, even more so than the fines involved in United Mine Workers and that the Court should review the case at issue to so provide and to make clear to lower courts that due process requires criminal rights to be afforded where severe sanctions are imposed, regardless of the characterization of the contempt as "civil" or criminal under the traditional analysis.

> The eighth and fourteenth amendments to the United States Constitution should prohibit a state court from imprisoning a civil contemnor for an indefinite period, now 29 months in duration. To suggest, as Respondent does, that a state may imprison a person adjudicated in contempt for a lengthy and indefinite period conflicts with notions of fundamental fairness and due process.

The Respondent has relied upon the decision of the Court in Uphaus v. Wyman, 360 U.S. 72 (1959) which held that imprisonment for contempt to coerce the production of documents was not a violation of the eighth amendment. Unlike the Petitioner, the contemnor in that case was not confined for 29 months. Moreover, the court in Uphaus analyzed the facts according to the civil-criminal contempt model, and concluded that the contempt involved there was, by definition, not punitive because it was "civil". The court's decision in United Mine Workers, supra, suggests that this analysis may no longer be acceptable, and that a lengthy imprisonment causes the sanction to be criminal and punitive, as it is in fact.

The Court has recognized the right to be free of physical restraint as a fundamental right and

has required states to present very clear justification for any imprisonment other than imprisonment which occurs by reason of a criminal conviction. Foucher v. Louisiana, 504 U.S. 71, 112 S. Ct. 1780 (1992); Kansas v. Hendricks, ____U.S.____, 117 S. Ct. 2072 (1997).

Petitioner has duly raised the constitutional issues below, and any suggestion by Respondent to the contrary is incorrect.

The Respondent suggested (Brief in Opposition, pp.6,7) that Petitioner has "failed to exhaust his state court remedies and to allow the Pennsylvania Supreme Court the opportunity to rule on these issues." This statement was made in the context of describing the denial by the U.S. District Court for the Eastern District of Pennsylvania of Petitioner's petition for writ of habeas corpus for failure to exhaust state remedies. Thus, Petitioner suggests that Respondent may have confused the requirements of 28 U.S.C.§2254 with those applicable to the review of a state court judgment as is involved in the Petition before the Court.

The Federal Constitutional issues presented in the Petition have been raised in the courts below, including the petition which sought discretionary review by the Supreme Court of Pennsylvania. The Respondent does not dispute that, and therefore there is no issue as to the jurisdiction of the Court in the matter. The Respondent was referring to a second appeal to the Pennsylvania Superior Court of a new habeas corpus denial filed while the petition for review of the Pennsylvania Superior Court judgment. (The one which is the subject of the instant petition) was pending before the Pennsylvania Supreme Court. The second appeal to the Pennsylvania Superior

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Court is not involved in this Petition.

CONCLUSION

For the reasons set forth in the Petition and this Reply, Petitioner urges that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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